THOMPSON HINE

ATLANTA   CINCINNATI   COLUMBUS   NEW YORK

CHICAGO   CLEVELAND   DAYTON   WASHINGTON, D.C.

March 2, 2021

APPLICATION GRANTED
SO ORDERED *Vernon Bro*
VERNON S. BRODERICK
U.S.D.J. 3/8/2021

VIA ECF
Hon. Vernon S. Broderick
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Spectrum Dynamics Medical Limited v. General Electric Company, et al.*,
      Case No.: 18-cv-11386 (VSB)

Dear Judge Broderick:

On behalf of the parties in the above-caption matter, we write pursuant to Federal Rule of Civil Procedure 5.2(e), Your Honor's Individual Rule of Practice iii(b), and the parties' Stipulated Confidentiality and Protective Order (the "Protective Order") (Doc. 156), and in accordance with Standing Order 19-MC-583 and Section 6 of the S.D.N.Y. Electronic Case Filing Rules and Instructions to request that Exhibits B and C to the Joint Disputed Claim Terms Chart filed March 2, 2021 be filed under seal.

The presumption of public access to judicial documents can be overcome if countervailing factors warrant confidentiality. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006); *see also Nixon v. Warner Commc'ns Inc.*, 435 U.S. 589, 598 (1978). Sealing of records may be justified to preserve "higher values," including the need to protect an entity from competitive injury. *Lugosch*, 435 F.3d at 124; *see also Tropical Sails Corp. v. Yext, Inc.*, No. 14-cv-7582, 2016 U.S. Dist. LEXIS 49029, at *10-11 (S.D.N.Y. Apr. 12) (risk of "competitive injury is sufficiently serious to warrant protection" of proprietary business information). Consistent with this, courts routinely permit sealing and redaction of competitively sensitive proprietary business information. *See, e.g.*, *Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Encyclopedia Brown Prods., Ltd. v. Home Box Office. Inc.*, 26 F. Supp. 2d 606, 614 (S.D.N.Y. 1998); *see also Nixon*, 435 U.S. at 598 (recognizing need to seal information that might "harm a litigant's competitive standing").

Here, Exhibits B and C contain Plaintiff's alleged trade secret information, which Plaintiff has designated as "Highly Confidential – Attorneys' Eyes Only" information under the Protective Order. This is the sort of sensitive information that courts consistently protect from disclosure. *See, e.g.*, *Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at *16 (S.D.N.Y. Sep. 7) (granting motion to seal documents containing proprietary information related to product development); *Encyclopedia Brown*, 26 F. Supp. 2d at 612 (sealing documents reflecting sensitive trade secret information).

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This request is narrowly tailored to preserve Plaintiff's designation of its alleged trade secrets as highly confidential information and does not deprive the public of access to critical information.

Very truly yours,

/s/ *Marla R. Butler*

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cc: All Counsel of Record via ECF